

As the tax collected by the Department of Revenue under the authority of the Simplified Municipal Telecommunications Tax Act is a telecommunications tax imposed by any municipality in the State, independent of home rule status, for the privilege of originating or receiving telecommunications, such tax is not in contravention of the provisions of the Illinois Insurance Code. See 35 ILCS 636/5-5. (This is a GIL.)

July 10, 2003

Dear Xxxxx:

This letter is in response to your letter dated March 25, 2003. We are responding to your request with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See, 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/Laws/regs/part1200>.

In your letter you stated and made inquiry as follows:

#### Summary

We maintain that insurance companies are exempt from the Municipal Telecommunications Taxes as such taxes are in contravention of the Illinois Insurance Code. Thus, the taxes are illegal and void as applied to insurance companies. In that regard, we request an opinion and interpretation in the form of a General Information Letter issued by the Illinois Department of Revenue ('IDOR') which confirms our conclusion.

#### Background

Legislation simplifying Illinois' local telecommunications taxes passed the Illinois General Assembly by overwhelming margins and was signed into law by former Illinois Governor George H. Ryan (R) on February 8, 2002. Senate Bill 88 (which became Public Act 92-0526) simplified the imposition and collection of municipal telecommunications taxes by consolidating all municipal telecommunications taxes into a single, municipally imposed telecommunications tax with a standard base at a rate that is revenue-neutral to the municipality. By design, this legislation is to level the competitive playing field and make local telephone taxes easier for taxpayers to understand. Its final provisions were supported by the telecommunications industry, the IDOR, and local municipal governments.

Beginning on January 1, 2003, the IDOR began collecting the tax on behalf of those municipalities imposing such tax (with the exception of the City of Chicago.) Local telecommunications taxes were previously collected by the local governments that

imposed them. The Chicago Department of Revenue collects and administers the Chicago tax.

### Legal Incidence of the Tax

By simplifying and consolidating the municipal telecommunications taxes, the Illinois General Assembly has also, in some cases, shifted the legal incidence of the tax from the telecommunications provider to the user. More specifically, the definitional section of 35 ILCS 630/2, Section 2 (h) states the following:

‘Taxpayer means a person who individually or through his agents, employees, or permittees engages in the act or privilege of originating or receiving telecommunications in this State and who incurs a tax liability under this Article.’

Although telecommunication providers and vendors, i.e., retailers have a legal obligation to collect and remit the tax to the IDOR, the legal incidence of the tax remains with the purchaser or customer for the privilege of purchasing and using telecommunications at the retail level of trade.

### Pre-empted Taxation of Insurance Companies

It is our experience and contention that insurance companies transacting business in the State of Illinois are exempt from the Simplified Municipal Telecommunications Tax Act and the taxes imposed thereunder. Section 2.1 of the Illinois Insurance Code (Section 215 ILCS 5/2.1) provides:

‘It is declared to be the public policy of this State, pursuant to paragraphs (h) and (i) of Section 6 of Article VII of the Illinois Constitution of 1970, that any power or function set forth in this Act to be exercised by the State is an exclusive State power or function. Such power or function shall not be exercised concurrently, either directly or indirectly, by any unit of local government, including home rule units, except as otherwise provided in this Act. Provided further that the fees, charges and taxes provided in this Act shall, as provided for in Section 415 of this Act be in lieu of all license fees or privilege or occupation taxes or other fees levied or assessed by any home rule unit and said Section 415 of this Act is declared to be a denial and limitation of the powers of home rule units pursuant to paragraph (g) of Section 6 of Article VII of the Illinois Constitution of 1970.’

Section 415 of the Illinois Insurance Code (Section 215 ILCS 5/415) states the following:

‘...the fees, charges, and taxes provided for by this Article shall be in lieu of all license fees or privilege or occupation tax or other fees levied or assessed by any municipality, county or other political subdivision of this State, and no municipality, county or political division of this state shall impose any license fee or privilege or occupation tax or fee upon any domestic, foreign, or alien company, or upon any of its agents, for the privilege of doing an insurance business therein, except the tax authorized by Division 10 of Article 11 of the Illinois Municipal Code, i.e., foreign fire

insurance company fees, as heretofore and hereafter amended. This section shall not be construed to prohibit the levy and collection of:

- (a) state, county or municipal taxes on the real and personal property of such company including the tax imposed by Section 414 of this Code, and
- (b) taxes for the purpose of maintaining the Office of the Fire Marshal of this state and paying the expense incident thereto.'

In effect, the State of Illinois has pre-empted taxation of insurance companies through Sections 2.1 and 415. As a result, these sections prohibit local units of government from imposing a tax whose legal incidence is upon an insurance company.

One theory behind these provisions is that insurance companies are fundamentally taxed differently than other corporations. At the state level, insurance companies pay the corporate income tax along with a privilege tax (and sometimes a retaliatory tax) on premiums written and collected whereas other general business corporations are just subject to an income tax. In addition to paying premium taxes, insurance companies are heavily regulated and burdened by a full complement of valuation, assessment, and regulatory fees.

#### Legality of Simplified Municipal Telecommunications Tax to Insurance Companies

By its enactment, the Simplified Municipal Telecommunications Tax Act repealed the municipal telecommunications excise tax, the municipal tax on the occupation or privilege of transmitting messages ('messages tax'), and the municipal infrastructure maintenance fee. Prior to their repeal, the messages tax and municipal infrastructure maintenance fee were imposed on the telecommunications provider but the provider was reimbursed by its customer. Now, the new municipal telecommunications taxes are imposed on the customer for the amounts paid for the act or privilege of originating or receiving telecommunications. Although telecommunication providers have a continual legal obligation to collect and remit the taxes to the IDOR (the Chicago Department of Revenue in the case of Chicago taxes), users or consumers are ultimately liable for paying the tax. As a result, the Municipal Telecommunications Tax is in contravention of the Illinois Insurance Code and is illegal and void as applied to insurance companies.

#### Legality of Similar Taxes to Insurance Companies

This conclusion is also consistent with two court decisions dealing with similar local taxes. In *Prudential Insurance Company of America v. The City of Chicago*, 1977, 6 Ill. 2d 437, 362 N.E. 2d 1021, the Illinois Supreme Court held that the Chicago Employer's Expense Tax, or 'head tax' was a privilege tax and upheld the trial court's judgment, finding that: (1) the Illinois General Assembly, in enacting Section 2.1 of the Insurance Code, intended to preclude municipalities from imposing any 'license fees or privilege or occupation taxes or other fees' upon insurance companies; and (2) in Section 2.1 the Illinois General Assembly also retained the state's exclusivity to tax insurance companies.

In *Combined Insurance Company of America v. City of Chicago*, No. 77 CH. 3126 (Cir Cook County Illinois, 1978), the Circuit Court concluded the Chicago Transaction Tax,

or 'leasing tax' was in contravention of the Illinois Insurance Code. Like the Employer's Expense Tax, the tax is illegal and void as applied to insurance companies.

### Conclusion

In summary, we maintain that insurance companies are exempt from the Municipal Telecommunications Taxes as such taxes are in contravention of the Illinois Insurance Code. Thus, they are illegal and void as applied to insurance companies. In that regard, we request an opinion and interpretation in the form of a General Information Letter issued by the IDOR which confirms our conclusion.

We believe the language contained within sections 2.1 and 415 of the Illinois Insurance Code, coupled with the *Prudential* and *Combined Insurance* cases should lead the IDOR to reach such conclusion.

Please direct any questions or requests for supplemental information you deem appropriate to me. If you do not concur with our conclusion, we request a meeting to discuss any discrepancies. Your reply should be addressed and sent to:

### ADDRESS

Our response is limited to the validity of municipal telecommunications taxes falling under the Illinois Department of Revenue's collection authority. This letter does not address the validity of taxes that the Department does not collect.

The Simplified Municipal Telecommunications Tax Act provides for a single telecommunications tax imposed by the corporate authorities of any municipality on the privilege of originating or receiving telecommunications, and on retailers engaged in the business of transmitting such telecommunications. See 35 ILCS 636/5-5. Therefore, the intent of the law is to allow any municipality to impose a telecommunications tax. The tax is not a tax imposed pursuant to the assessment authority of a Home Rule unit.

The Illinois Insurance Code under Section 2.1 (215 ILCS 5/2.1) provides for the exclusivity of the State's power to govern the insurance business. The Code goes on to state that the fees, charges and taxes levied against insurance businesses under the Act shall, as provided for in Section 415 of the Act, "be in lieu of all license fees or privilege or occupation taxes or other fees levied or assessed by any home rule unit". Section 2.1 declares Section 415 of the Illinois Insurance Code to be a denial and limitation of the powers of home rule units. Section 415 denies a municipality of this state the ability to "impose any license fee or privilege or occupation tax or fee upon any domestic, foreign, or alien company, or upon its agents, for the privilege of doing an insurance business therein, except the tax authorized under Division 10 of Article 11 of the Illinois Municipal Code". See 215 ILCS 5/415.

Pursuant to Sections 2.1 and 415 of the Illinois Insurance Code, home rule units are denied the ability to tax insurance companies for the privilege of doing insurance business in Illinois. As the tax collected by the Department of Revenue under the authority of the Simplified Municipal Telecommunications Tax Act is a telecommunications tax imposed by any municipality in the State, independent of home rule status, for the privilege of originating or receiving telecommunications, such tax is not in contravention of the provisions of the Illinois Insurance Code.

I hope this information has been helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.state.il.us](http://www.state.il.us). If you have further questions related to the Illinois sales and use tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b). Such regulation may be obtained from our Web site mentioned above at <http://www.revenue.state.il.us/Laws/regs/part1200>.

Sincerely,

Dana Deen Kinion  
Associate Counsel

DDK:msk